

Regular Meeting

Agenda Item #	3
Meeting Date	October 22, 2007
Prepared By	Kenneth Sigman Assistant City Attorney
Approved By	Barbara B. Matthews City Manager

Discussion Item	Revision of Title 12, Trees and Vegetation, Chapter 12, Urban Forest
Background	<p>The Urban Forest chapter of the Takoma Park Code requires property owners to obtain a permit prior to removing trees from their property or engaging in construction activity that may endanger trees on or near their property. Neighbors and other interested persons are entitled to present evidence in support of protecting or preserving trees at a hearing before the Tree Commission prior to the issuance of final tree permits.</p> <p>To ensure that interested persons receive notice of the proposed construction activity or tree removal, the Code requires the posting or mailing of notice of the City Arborist's preliminary approval of a tree permit and notice of the right to appeal the preliminary approval to the Tree Commission. However, if the Arborist preliminarily denies a permit and the applicant appeals the denial to the Tree Commission, the Code does not require the posting of notice of the appeal. Therefore, interested persons do not have the opportunity to present evidence in support of the denial to the Tree Commission before the Commission renders a final decision on the application, which may result in the granting of a final permit.</p> <p>The Code also does not establish notice requirements for Tree Commission hearings, which may reduce public participation in the tree permit process.</p>
Policy	The Urban Forest Chapter is intended to give persons interested in the protection or preservation of trees the opportunity to present evidence in support of the trees before the issuance of a final tree permit. The proposed amendment furthers that policy by requiring the posting or mailing of notice of appeals of preliminary denials of tree permits. Based on comments from Catherine Tunis regarding the amendments presented to the Council on October 15, the ordinance presented for first reading includes a new provision imposing minimum requirements regarding the timing of notice of Tree Commission hearings.
Fiscal Impact	<ul style="list-style-type: none"> • Additional cost and staff time associated with mailings and postings of notices. • Slightly higher legal costs resulting from longer Tree Commission hearings and longer Tree Commission opinion and orders.
Attachments	Proposed ordinance.
Recommendation	Approve the proposed ordinance at first reading.
Special Consideration	

Introduced by:

First Reading: October 22, 2007

Drafted by: Kenneth Sigman, Asst. City Attorney

Second Reading:

Effective Date:

Draft date: October 19, 2007

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2007-

An Ordinance Amending the Urban Forest Chapter to Provide Residents with Notice of Tree Commission Hearings Regarding Appeals of Tree Permit Denials

WHEREAS, under the current Code, the City does not require the posting of notice of the City Arborist's preliminary denial of a tree permit application; and

WHEREAS, as a result of the absence of such a notice requirement, when a tree permit applicant appeals the preliminary denial of a tree permit to the Tree Commission, the Tree Commission may reverse the denial and grant a final tree permit without neighbors and other interested individuals having had the opportunity to present evidence in opposition to the application; and

WHEREAS, the City intends for the public to have an opportunity to present evidence in support of protecting or preserving urban forest trees before the issuance of a final tree permit.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND.

SECTION 1. Title 12, Trees and Vegetation, Chapter 12, Urban Forest, Section 110 of the *Takoma Park Code* (2004 edition) is amended as follows:

12.12.110 Appeals from permit decisions.

- A. The permit applicant or any resident of the City or owner of property in the City may appeal the preliminary approval of an application for a tree permit within the 15-day notice period. The permit applicant or the owner of a property with a common property line may appeal the preliminary approval of an application for a tree protection plan permit within the 15-day notice period. If a notice of appeal is filed during such 15-day ~~posting~~notice period, then no permit is issued until the Tree Commission has conducted a fact-finding hearing and has issued its final decision on the appeal.
- B. A notice of appeal from the preliminary approval of an application for a tree protection plan permit must allege with particularity facts upon which the Tree Commission could

determine that the tree protection plan is insufficient to protect the trees to be protected under the plan.

- C. The permit applicant also may appeal the denial of a permit within 15 days after the date that the City Manager notifies the applicant of the denial of a permit for the removal or destruction of a tree covered by this chapter.
- D. There is a rebuttable presumption that the decision of the City Manager with respect to a permit application is correct. Any decision by the Tree Commission to impose conditions upon an applicant or reverse or modify a decision of the City Manager with respect to a permit application must be based upon substantial evidence in the record. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
- E. There is no appeal from the tree replacement requirement or from the granting or denial of a tree permit waiver by the City Manager.
- F. Notices of appeal and hearing notices.
 - 1. A notice of appeal ~~is~~must be in writing, state the reasons for the appeal, the name, address, and email address of the appellant, and the nature of the interest of the person filing the appeal~~appellant.~~ Appeal notices ~~are~~shall be filed with the City Manager, who shall forward the notice to the Department and the Tree Commission.
 - 2. Hearing Notices.
 - a. For hearings on appeals from preliminary tree protection plan permit decisions, the Department shall send written notice of the time, date, and location of the hearing to the permit applicant and to the address of the owner(s) of record of all properties sharing a common property line with the property. Such notice shall be sent at least 15 days before the scheduled hearing date.
 - b. For hearings on appeals from preliminary tree permit decisions, the Department shall provide written notice of the time, date, and location of the hearing to the permit applicant and all persons that timely file a written notice of appeal and shall post notice of the hearing on the property in question in plain view from the public right-of-way, on a bulletin board at the Municipal Building, and on the City's web site for at least 15 consecutive days prior to the hearing date. The applicant is responsible for maintaining the notice on his or her property for the entire posting period. The City Manager may continue the hearing until a later date and immediately post notice of the continuation if he or she determines that the applicant failed to make good faith efforts to maintain the notice for the entire posting period.

G. ~~_____ An appeal is dismissed if the party filing the~~ The Commission may dismiss an
appeal if the person filing the notice of appeal, or his or her representative, fails to
appear for~~at~~ the hearing.

SECTION 2. This Ordinance shall be effective immediately.

Adopted this _____ day of _____, 200__, by roll-call vote as follows:

Aye:

Nay:

Absent:

Abstain:

EXPLANATORY NOTE

Additions to the existing language of the *Takoma Park Code* are shown by underlining.

Deletions to the existing language of the *Takoma Park Code* are shown by ~~strikeout~~.